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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 20 1994

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Completion)
Act of 1992: Rate Regulation)

FCC - MAIL ROOM

MM Docket No. 92-266

To: The Commission

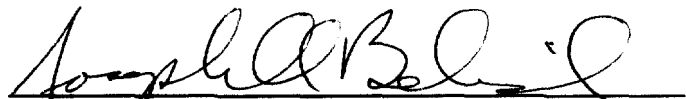
COMMENTS IN RESPONSE TO
FIFTH NOTICE OF PROPOSED RULEMAKING

Leibowitz & Associates, P.A. ("Leibowitz") asks that the attached Petition for Rule Making Or, In The Alternative For Declaratory Ruling be considered as comments in the above-referenced proceeding. Leibowitz submits that the basis of cable rate regulation is providing a fair rate of return on investment to an industry that operates, for most part, as a monopoly within its service area. Unless cable systems can show that it costs more to serve commercial cable subscribers than it costs to serve residential subscribers, cable systems should not be allowed to charge more to their commercial cable subscribers. That is the whole point of defining a fair price in terms of a rate of return.

April 19, 1994

Respectfully submitted,

Leibowitz & Associates
One S.E. Third Avenue
Suite 1450
Miami, Fl. 33131
(305) 530-1322


Joseph A. Belisle
Counsel for
Leibowitz & Associates, P.A.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In Re:)
)
Regulation of) RM _____
Cable Television)
Rates for Commercial)
Subscribers)

To: The Commission

PETITION FOR RULE MAKING OR, IN THE ALTERNATIVE,
FOR DECLARATORY RULING

The Law Firm of Leibowitz & Associates P.A. ("Leibowitz")
requests that Rule 76.5(ee) be amended to read as follows:

Subscriber. A person who receives broadcast programming
distributed by a cable television system and does not
further distribute it.

The purpose of this request is to require that cable television
rates for commercial subscribers, e.g. corporations, partnerships,
limited partnerships etc., be subject to rate regulation under Rule
76.922.¹

In support of this request, Leibowitz submits that the intent
of Section 623 of the Communications Act of 1934 as amended, 47

¹Rule 76.922 (a) regulates the maximum monthly charge per
subscriber for each tier of cable television programming. Rates
charged to commercial subscribers should be considered in these
rate calculations. The current definition of subscriber as a
"member of the general public" suggests that commercial entities
may not be included in the definition.

U.S.C. § 543, is that cable systems employ uniform rate structures that provide all persons reasonable rates on a non-discriminatory basis.

Presently commercial subscribers to cable television service are charged rates far in excess of those imposed upon residential subscribers for the same service.² These rate differences have no apparent relationship to the cost of providing service. Leibowitz submits that it is unreasonable for a subscriber to pay more to view a cable television program in an office than he or she would pay to view the same program in a private residence.

The omission of commercial subscribers from rate regulation calculations undercounts the number of subscribers on a system and distorts computation of average rates per channel per subscriber. Any attempt to regulate cable rates without accounting for commercial subscriber rates falls short of Congress' objective of establishing reasonable cable television rates for all. Indeed it frustrates Congress' direction to the FCC in 47 U.S.C. § 543 that the Commission compile data on average rates for basic cable service.

As an alternative to amending Rule 76.5(ee), Leibowitz asks that the the Commission interpret the term "member of the general

²See Declaration of Elizabeth Barbadaes and Letter of Dade County Cable Television Coordinator appended hereto.

public" in the current definition of "subscriber" to include any "person," as that term is defined in Rule 76.5(aa). A declaratory ruling to this effect would obviate the need to amend Rule 76.5(ee) and would place commercial subscriber rates squarely within the non-discriminatory rate regulation framework intended by Congress.

In view of the foregoing, Leibowitz requests initiation of an appropriate rule making proceeding or issuance of the requested declaratory ruling.

Respectfully submitted,



Matthew L. Leibowitz
Joseph A. Belisle
Ila L. Feld
Counsel for
Leibowitz & Associates P.A.

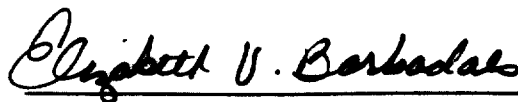
February 8, 1994

Leibowitz & Associates
One S.E. Third Avenue
Suite 1450
Miami, Florida 33131
(305) 530-1322

DECLARATION

Elizabeth V. Barbadaes declares under penalty of perjury that:

I am an employee of Leibowitz & Associates P.A. a Miami, Florida, Law Firm. On February 7, 1994, I called the local cable television system to obtain cable service for the law firm. I was told that the monthly rate for basic 45 channel service for the law firm would be \$54.34 for one outlet. The residential rate for this same 45 channel service is \$26.63 per month.

A handwritten signature in cursive script, reading "Elizabeth V. Barbadaes", is written over a horizontal line.

Elizabeth V. Barbadaes



CONSUMER SERVICES DEPARTMENT
OFFICE OF CABLE TELEVISION COORDINATION
ROOM 901
140 WEST FLAGLER STREET
MIAMI, FLORIDA 33130-1584
(305) 375-3677
FAX (305) 375-4120
TDD (305) 375-4177

February 8, 1994

Matthew L. Leibowitz, Esq.
Leibowitz & Associates, P.A.
SunBank International Center
One Southeast Third Avenue
Miami, Florida 33131-1715

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APR 20 1994

FCC - MAIL ROOM

Dear Mr. Leibowitz:

This office has responsibility for the day-to-day oversight and monitoring of eight cable television licenses granted by Metropolitan Dade County. We have reviewed our files to determine whether there is a rate differentiation between services provided to businesses and services provided to residential accounts.

Our files reflect that, in some cases, commercial accounts are billed at a higher rate than residential accounts and are apparently not considered as part of regulated services. For example, Attachment #1, a current local rate card, separately lists higher monthly charges billed to businesses. Prior to rate regulation it is our understanding that cable systems charged different fees to businesses. Attachment #2 is one notice of commercial fees. Although commercial rates have not been typically listed on September 1993 rate cards, it is our understanding that rate differentials in monthly service remain in force.

Attachment #1 also states that businesses are billed using a different standard, the Hourly Service Rate, for installations and other types of services for which residential accounts have separate fees. This statement is similar to statements reflected on other rate cards issued as of September 1, 1993 (Attachments 3, 4, and 5).

Sincerely,

A handwritten signature in black ink, appearing to read 'Cathy Grimes Peel', written over a horizontal line.

Cathy Grimes Peel
Cable Television Coordinator

Attachments

CABLE SATELLITE OF SOUTH MIAMI

148-04012 833

"Your Satellite Connection For A Changing Lifestyle"

Dear Sir,

To comply with Federal Regulations under the 1992 Cable Act, we will be making some changes to our channel line-up and charges for services. Because of the Federal Government's rate formula, some service levels may increase in price while others decrease. These changes take effect on September 1, 1993 and will be reflected in your October bill.

PRODUCTS & SERVICES PRICE LIST

(all prices exclude applicable franchise fees and any other Governmental charges)

BASIC SERVICE - \$25.48 per month

PREMIUM & PAY PER VIEW SERVICES

Premium services may be purchased individually or for greater savings, buy more than one and receive special discounts.

Individual Premium Service (per month)

HBO	\$12.95
Showtime	\$10.95
The Disney Channel	\$ 9.95
Cinemax	\$12.95
The Movie Channel	\$10.95
Playboy	\$ 9.95
Encore	\$ 8.95
SUR (Spanish)	\$ 8.95
Sports Channel	\$ 2.95

Supersay Package (per month)

Showtime/Movie Channel/Encore	\$13.95
-------------------------------	---------

Additional Discounts For Premium Service

(per month)	
HBO/Disney/Cinemax/Playboy	
Any Two Premium Services	\$20.85
Any Three Premium Services	\$30.85
Any Four Premium Services	\$40.85

PAY-PER-VIEW SERVICES

With the use of an addressable converter (for which there is a separate monthly charge) you may call the Pay-Per-View phone numbers listed below and order a movie or event. The schedule of Pay-Per-View movies and events, ordering instructions, and their prices are shown on the Preview Channel (Channel 55). Your account will be charged for each movie or event you order.

Pay-Per-View

Request 1	\$ 3.95	330-1070	Action Pay Per View	\$ 3.95	To Be Announced
Request 2	\$ 3.95	To Be Announced	Playboy at Night	\$ 4.95	330-1038
Request 3	\$ 3.95	To Be Announced	Special Events	Varied	330-1414

PREMIUM CABLE GUIDE - Plan your premium cable viewing with this informative guide at \$1.00 per month.

EQUIPMENT

Addressable Converter \$1.95 per month Remote Control \$.52 per month Additional Outlet N/C per month

INSTALLATION & REPAIR

Unwired Residence Installation (within 125' of existing cable plant)	\$ 52.76*	Connect FM at Time of Initial Installation	\$ 8.79*
Wired Residence Installation	\$ 26.38*	Connect FM Requiring Separate Installation	\$ 13.19*
Restart/Reconnect/Transfer Residence Installation	\$ 26.38*	Purchase A/B Switch	\$ 5.00
Restart/Reconnect For Non-Pay	\$ 26.38*	Install A/B Switch at Time of Initial Installation	\$ 8.79*
Additional Connection at Time of Initial Installation	\$ 13.19*	Install A/B Switch Requiring Separate Installation	\$ 13.19*
Additional Connection Required Separate Installation	\$ 26.38*	Delivery/Pickup of Remote/Converter After Initial Installation	\$ 13.19*
Relocate Outlet	\$ 26.38*	Administrative Fee for Delinquent Payment	\$ 5.00
Computer Upgrade on Optional Services	\$ 2.00*	Non-Sufficient Funds Charge	\$ 20.00
Computer Downgrade on Optional Services	\$ 2.00*	Unreturned Addressable Converter Charge	\$125.00
Connect VCR at Time of Initial Installation	\$ 8.79*	Unreturned Remote Charge	\$ 10.00
Connect VCR Requiring Separate Installation	\$ 13.19*	Installation Promotion Only	\$ 19.95
		Hourly Service Charge (Customer Related) 1 Hr. Minimum	\$ 52.76*

* Commercial and non-standard installations and other services not listed above will be charged the Hourly Service Charge. Please call us for more information. Prices do not include franchise fees or any other Governmental charges. All prices are subject to change.

Commercial Basic Cable - (Lounges/Bars)	\$ 99.95	Commercial Basic Cable - (Others)	\$ 49.95
Additional Outlet - (Lounges/Bars)	\$ 50.00	Additional Outlet - (Others)	\$ 25.00
Converter	\$ 1.95	Converter	\$ 1.95
Remote	\$.52	Remote	\$.52

OPTIONAL MONTHLY SERVICE CONTRACT

Optional Service Contract \$ 2.00 per month

Eliminates the following charges regardless of number of occurrences:

Hourly Service Charge (Customer Related) 1 Hr. Minimum	\$ 52.76*	Connect VCR Requiring Separate Installation	\$ 13.19*
Additional Connection Required Separate Installation	\$ 26.38*	Connect FM Requiring Separate Installation	\$ 13.19*
Relocate Outlet	\$ 26.38*	Installation A/B Switch Requiring Separate Installation	\$ 13.19*
Computer Upgrade on Optional Services	\$ 2.00*	Delivery of Remote/Converter After Initial Installation	\$ 13.19*
Computer Downgrade on Optional Services	\$ 2.00*		

*These prices are formulated by using the Hourly Service Charge (HSC) as prescribed by the Federal Communication Commission formulas multiplied by the average time for each installation activity based upon historical data.

(continued on reverse side)

CERTIFIED MAIL P 721 768 877

February 17, 1993

Cathy Peel
Metropolitan Dade County
Office of Cable Television Coordination
140 West Flagler Street #901
Miami, FL 33130

RECEIVED

APR 21 1993

FCC - MAIL ROOM

Dear Cathy,

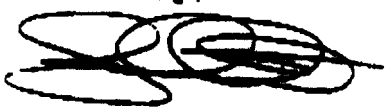
As we discussed on the telephone today, I am sending you this letter to verify that our current Commercial Business rates are on file with your office. These rates apply for establishments such as restaurants, bars, waiting areas, hotel lobbies, or any other area in which the television outlet is placed for "group" or "public" viewing. The following monthly service rates apply:

Commercial Cable Service \$50.00 per month
(primary outlet)

Commercial Cable Service \$15.00 per month
(each additional outlet)

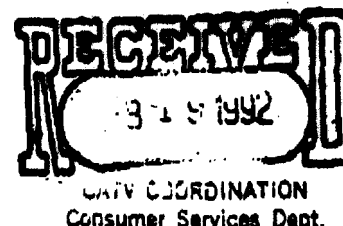
All installation charges quoted to Commercial Business subscribers are on a "time and material" basis. These rates are current as of this date and are not new or revised. If you have any additional questions, please give me a call.

Sincerely,



Jay M. Abbazia
Marketing Manager

CC: Steve Friedman
Leo Delgado
Paula Davidson



TCL of South Dade

We're taking television into tomorrow.

- 2 WPBT (2) (PBS)
- 3 WTVT (23) (NBC)
- 4 WTVT (6) (NBC)
- 5 WDTN (39) (NBC)
- 6 WDCB (6) (CBS)
- 7 WSVN (2) (FOX)
- 8 WSVN (2) (FOX)
- 9 WSVN (2) (FOX)
- 10 WSVN (2) (FOX)
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- 49 WSVN (2) (FOX)
- 50 WSVN (2) (FOX)
- 51 WSVN (2) (FOX)

* Freeview Channel, Request

* Freeview Basic Channel

Effective Sept. 1, 1993

TCL of South Dade

We're taking television into tomorrow.

To comply with federal regulations under the 1992 Cable Act, we will be making some changes in our channel line-up and charges for services. Because of the federal government's rate formula, some service levels may increase in price while others decrease. These changes take effect on September 1, 1993.

Dear Customer,

Premium Services

(all prices exclude applicable franchise fees and taxes)

The minimum level of cable service you may purchase is BASIC SERVICE. You may purchase BASIC SERVICE alone or with any other OPTIONAL SERVICES listed below.

BASIC SERVICE - \$18.85 per month.

Expanded Basic

EXPANDED BASIC - \$13.27 per month

Premium and Pay-Per-View Services

Premium services may be purchased individually or, for greater savings, buy more than one and receive the "package price."

Individual Premium Service Package Premium Service

	(per month)	(per month)
HBO	\$13.65	Any Two Premium Services \$20.95
Showtime	\$13.25	Any Three Premium Services \$24.95
The Disney Channel	\$13.25	Any Four Premium Services \$29.95
Cosmos	\$13.25	Any Five Premium Services \$34.95
Calatrisa	\$13.25	All Six Premium Services \$39.95
The Movie Channel	\$13.75	Add Service to any other
Encore	\$ 1.75	Premium Service fee only \$ 1.00

Pay-Per-View Services

With the use of an addressable converter (for which there is a separate monthly charge) you may call the designated 1-800-REQUEST number and order a movie or event. The schedule of Pay-Per-View movies and events, ordering instructions, and their prices are shown on the Speak Preview (Channel 40). Your account will be charged for each movie or event you order.

CABLE GUIDE - Plan your cable viewing with this informative guide. \$1.00 per month.

Optional Services

DATA (Digital) Movie Rental - 30 channels of digital quality, commercial free music for your stereo, DATA service cost is \$9.95 monthly.

DJ Remote Control - works with DATA Stereo Service. \$3.00 monthly.

Installation

Standard Converter	\$8.79 per month
Addressable Converter	\$1.31 per month
Remote Control	\$0.10 per month

Installation Services

Unwired House Installation (within 125' of existing cable plant)	\$ 30.40*
Reconnect / Reconnect House Installation	\$ 25.30*
Additional Connection at Time of Initial Installation	\$ 8.40*
Additional Connection Requested Separate Installation	\$ 25.30*
Move Order	\$ 25.30*
Upgrade or Downgrade of Optional Services (Addressable)	\$ 2.00*
Upgrade or Downgrade of Optional Services (Non-Addressable)	\$ 14.80*
Connect WCR at Time of Initial Installation	\$ 8.40*
Connect WCR Requested Separate Installation	\$ 16.80*
Connect FM at Time of Initial Installation	\$ 8.40*
Connect FM Requested Separate Installation	\$ 16.80*
Install DATA at Time of Initial Installation	\$ 8.40*
Install DATA Requested Separate Installation	\$ 16.80*
Purchase A/B Switch	\$ 5.00
Install A/B Switch at Time of Initial Installation	\$ 5.40*
Install A/B Switch Requested Separate Installation	\$ 16.80*
Administrative Fee for subsequent payment	\$ 5.00
Non-Sufficient Funds Charge	\$ 15.00
Unwired Standard Converter Charge	\$ 75.00
Unwired Addressable Converter Charge	\$ 150.00
Unwired Remote Charge	\$ 14.00

* Commercial and non-standard installations and other services not listed above will be charged at the Heavy Service Charge. Please call for more information. Prices do not include franchise fees or taxes. All prices are subject to change.

* These prices are formulated by using the Heavy Service Charge (HSC) as prescribed by the Federal Communications Commission for service provided by the average time for each installation activity based on historical data.

* Meritline case information on Espanol? Llame a su compañía de cable al 595-0766.

© 1993 SDC

Miami Tele-Communications, Inc. *We're taking television into tomorrow*

Dear Customer,

To comply with federal regulations under the 1992 Cable Act, we will be making some changes to our channel line-up and charges for services. Because of the federal government's rate formula, some service levels may increase in price while others decrease. These changes take effect on September 1, 1993.

(all prices exclude applicable franchise fees and taxes)

The minimum level of cable service you may purchase is **BASIC SERVICE**. You may purchase **BASIC SERVICE** alone or with any other **OPTIONAL SERVICES** listed below.
BASIC SERVICE - \$9.92 per month. Includes: WPTV, WTVT, WTVJ, WDLZ, WCTX, WSVN, WLRN, Miami Nel 9, WPLG, Community Access, WHFT, Home Shopping, WSCV, WBRS, Hometown TV and Government Access.

EXPANDED BASIC - \$13.89 per month

PREMIUM AND PAY-PER-VIEW SERVICES

Premium services may be purchased individually or, for greater savings, buy more than one and receive the "package price."

Individual Premium Service		Package Premium Service	
	(per month)		(per month)
HBO	\$13.66	Any Two Premium Services	\$20.95
Showtime	\$13.25	Any Three Premium Services	\$24.95
The Disney Channel	\$13.25	Any Four Premium Services	\$29.95
Cinemax	\$13.25	Any Five Premium Services	\$34.95
The Movie Channel	\$13.25	Add Encore to any other	
Encore	\$ 1.75	Premium Service for only	\$ 1.00
Playboy	\$12.25	*Playboy is not included in Package Premium Service	

PAY-PER-VIEW SERVICES

With the use of an addressable converter (for which there is a separate monthly charge) you may call the designated 1-800 numbers and order a movie or event. The schedule of Pay-Per-View movies and events, ordering instructions, and their prices are shown on the **Special Preview Channel (Channel 28)**. Your account will be charged for each movie or event you order.

CABLE GUIDE - Plan your cable viewing with this informative guide. \$1.00 per month.

DMX (Digital Music Extended) - 30 channels of digital quality, commercial free music for your stereo. DMX service cost is \$9.48 monthly.

DI Remote Control - works with DMX Stereo Service, \$2.85 monthly.

Standard Converter	\$0.77 per month
Addressable Converter	\$1.29 per month
Remote Control	\$0.10 per month

Unwired Home Installation (within 125' of existing cable plant)	\$ 53.10*
Reconnect / Reconnect Home Installation	\$ 26.55*
Additional Connection at Time of Initial Installation	\$ 8.85*
Additional Connection Required Separate Installation	\$ 26.55*
Move Outlet	\$ 8.85*
Upgrade or Downgrade of Optional Services (Addressable)	\$ 2.00*
Upgrade or Downgrade of Optional Services (Non-Addressable)	\$ 17.70*
Connect VCR at Time of Initial Installation	\$ 8.85*
Connect VCR Requiring Separate Installation	\$ 17.70*
Install DMX at Time of Initial Installation	\$ 8.85*
Install DMX requiring Separate Installation	\$ 17.70*
Purchase A/B Switch	\$ 5.00
Install A/B Switch at Time of Initial Installation	\$ 5.90*
Install A/B Switch Requiring Separate Installation	\$ 17.70*
Administrative Fee for delinquent payment	\$ 5.00
Processing Charge (Collections)	\$ 15.00
Non-Standard Funds Charge	\$ 20.00
Unwired Standard Converter Charge	\$ 75.00
Unwired Addressable Converter Charge	\$150.00
Unwired Remote Control Charge	\$ 10.00
Unwired DMX Tuner w/Remote Charge	\$200.00

Commercial and non-standard installations and other services not listed above will be charged at the Hourly Service Charge. Please call us for more information. Prices do not include franchise fees or taxes. All prices are subject to change.

* These prices are formulated by using the Hourly Service Charge as established by the Federal Communication Commission formula multiplied by the average time for each installation activity based upon historical data.

* Necesario esta información en Español?
 Llame a su compañía de cable al 326-1574.

STCMA

TCI of South Florida
We're taking television into tomorrow.
18601 NW 2nd Avenue
Miami, Florida 33169



PRESORTED
FIRST-CLASS
U.S. POSTAGE PAID
MIAMI, FL
PERMIT NO. 6645

Installation Charge Rates

Un-wired Standard Home Installation (within 125' of existing cable plant).....	\$ 44.95*
Restart / Reconnect Standard Home Installation	\$ 29.95*
Additional Connection at Time of Initial Installation	\$ 22.45*
Additional Connection Requiring Separate Installation/Visit.....	\$ 22.45*
Move/Relocate Existing Outlet.....	\$ 22.45*
Upgrade or Downgrade of Optional Services (Addressable)	\$ 2.00*
Upgrade or Downgrade of Optional Services (Non-Addressable)	\$ 15.00*
Connect VCR at Time of Installation	\$ 7.50*
Connect VCR Requiring Separate Installation/Visit ..	\$ 15.00*
Install DMX at Time of Installation.....	\$ 7.50*
Install DMX Requiring Separate Installation/Visit....	\$ 22.45*
Purchase A/B Switch	\$ 5.00
Install A/B Switch at Time of Installation	\$ 7.50*
Install A/B Switch Requiring Separate Installation/Visit.....	\$ 15.00*
Administrative Fee for Delinquent Payment	\$ 5.00
Non-Sufficient Funds Charge (\$20.00 or 5% whichever is greater).....	\$ 20.00
Unreturned Standard Converter Charge.....	\$ 75.00
Unreturned Addressable Converter Charge.....	\$150.00
Unreturned Hand-Held Remote Control Unit.....	\$ 10.00
Minimum Trip Charge	\$ 15.00*

* Prices are formulated by using the Hourly Service Charge (HSC-\$29.95 per hour), as prescribed by the Federal Communications Commission multiplied by the average time for each installation activity, based upon historical data. Charges/prices may be slightly higher based upon the actual time taken to complete each installation/service activity. A minimum "trip charge" may apply.

Commercial and non-standard (custom) installations and other services not listed above will be charged at the Hourly Service Charge. Please call our Customer Service Center at 652-9900 for more information. All prices listed above are subject to franchise fees and taxes. All prices are subject to change.

0117RSE

CERTIFICATE OF SERVICE

I, Tania M. Rehman, hereby certify that the attached Petition For Rule Making Or, In The Alternative, For Declaratory Ruling submitted on behalf of Leibowitz & Associates was sent this 8th day of February, 1994 to the following persons by U.S. mail, first class postage prepaid:

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20054

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Commissioner Andrew C. Barret
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Alexandra Wilson, Acting Chief
Cable Television Bureau
2033 M Street, NW
Room 918
Washington, D.C. 20554

William H. Johnson, Deputy Chief
Mass Media Bureau
1919 M Street, N.W.
Room 314
Washington, D.C. 20554

Tania M. Rehman

Tania M. Rehman

CERTIFICATE OF SERVICE

I, Tania M. Rehman, hereby certify that the attached Comments In Response To Fifth Notice Of Proposed Rulemaking submitted on behalf of Leibowitz & Associates was sent this 19th day of April, 1994 to the following persons by U.S. mail, first class postage prepaid:

Lawrence Walke, Esquire
Cable Services Bureau
2033 M Street
Room 918
Washington, D.C. 20554

Tania M. Rehman
Tania M. Rehman